**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**O. O. C. J.**

COMPANY APPLICATION NO.386 OF 2006
IN
COMPANY PETITION NO.144 OF 2006

SICOM LIMITED. ...Applicant.
Versus
Official Liquidator, High Court, Bombay. ...Respondent.

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Mr. M.P. Rege i/b. M.P. Rege & Co. for the Applicant.
Mrs. K.V. Gautam, Dy. Official Liquidator present.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

April 30, 2007.

**P.C.:**

This application has been taken out by SICOM Ltd. ("SICOM"). SICOM seeks the permission of the Court to exercise its statutory power under Section 29 of the State Finance Corporation Act, 1951, by (i) Taking over physical possession of the mortgaged/hypothecated properties of the Company in liquidation, namely, the land, building, plant, machinery and all other movable properties and assets at R.S. No.121/1, Sidhnerli Road, village Kagal, Taluka Kagal, District Kolhapur; (ii) Thereafter taking steps for the sale of the property; and (iii) Appropriation of the net sale proceeds among the applicant and other secured

creditors subject to the claim of the workers under Section 529A of the Companies' Act, 1956.

2. In **Rajasthan Financial Corporation vs. Official Liquidator,** 2005 (63) SCL 468 SC, the Supreme Court, on a review of the law, summarised the legal position inter alia governing the powers of the State Finance Corporations vis-a-vis a Company in liquidation. The third principle enunciated in the judgment of the Supreme Court in para 18 reads as follows:

> "(iii) If a Financial Corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the Company court and acting in terms of the directions issued by that Court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of section 529A and Section 529 of the Companies Act."

3. In the present case, on a recommendation made by the BIFR that it was just and equitable to wind up the Company in pursuance of the provisions of Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, the Official Liquidator was appointed as Provisional Liquidator on 5th May 2006. The

applicant had sanctioned a loan aggregating to Rs.165 lakhs between 1987 and 1994 to the Company. To secure the repayment of the loan the Company mortgaged its land and immovable assets and hypothecated the movables and properties situated at R.S. 121/1. SICOM issued a demand notice on 2nd June 1993 which was followed by a takeover notice dated 8th March 1994. Another notice was issued on 20th January 1995. However, before SICOM took over possession, the Company was registered with the BIFR on 23rd January 1995. Eventually, on 16th June 2000, the BIFR recorded an opinion that it was just and equitable to wind up the Company. As on 30th April 2005, the claim of the applicant was in the amount of Rs. 1121.77 lakhs.

4. Having regard to the law laid down by the Supreme Court in **Rajasthan Financial Corporation** (supra), it would be appropriate to permit the applicant to take over the mortgaged/hypothecated assets in exercise of the power conferred by Section 29 of the State Finance Corporation Act, 1951. However, while granting reliefs in these terms, it would be necessary to direct that the applicant shall keep the Official Liquidator informed at all stages, before the property is actually put

up for sale. The applicant shall take steps for carrying out the sale of the mortgaged/hypothecated properties only after obtaining appropriate directions from the Company Court inter alia as regards associating the Official Liquidator with the sale, the fixing of the upset price or reserve price, confirmation of the sale; holding of the sale proceeds and distribution thereof amongst the creditors under Section 529 and 529-A of the Companies' Act, 1956. Learned Counsel for the Applicant has no objection and states that a Company Application will be moved by the Applicant for seeking suitable directions. Within four weeks from today, the Applicant shall lodge with the Official Liquidator copies of the relevant security documents executed in favour of the applicant by the Company in liquidation so as to enable the Liquidator to scrutinise the same and to place a further report before this Court for directions, if necessary. There shall be an order in the aforesaid terms. The Company Application is accordingly disposed of.

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